

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC., a Delaware corporation,
Plaintiff,

v.

JOSHUA FISHER, JACOB W. MAHURON
A/K/A “PRAGMATIC TAX,” MATTHEW
ABBOTT A/K/A “NOVA,” DAVID
HASTINGS A/K/A “J3STER,” TRAVERS
RUTTEN A/K/A “TRAVERS7134,” JESSE
WATSON A/K/A “JESSEWATSON3944,”
JOHN DOE NO. 1 A/K/A “CALC” JOHN
DOE NO. 2 A/K/A “CYPHER,” JOHN
DOE NO. 3 A/K/A “KHALEESI,” JOHN
DOE NO. 4 A/K/A “GOD,” JOHN DOE
NO. 5 A/K/A “C52YOU,” JOHN DOE NO.
6 A/K/A “LELABOWERS74,” JOHN DOE
NO. 7 A/K/A “FRAMEWORK,” JOHN
DOE NO. 8 A/K/A “SEQUEL,” JOHN DOE
NO. 9 A/K/A “1NVITUS,” JOHN DOE NO.
10 A/K/A “SINISTER,” AND JOHN DOES
NO. 11-50,
Defendants.

Case No. 2:23-cv-01143-MLP

PLAINTIFF BUNGIE, INC.’S UNOPPOSED
MOTION TO AUTHORIZE THIRD-PARTY
DISCLOSURE IN RESPONSE TO
SUBPOENAS

NOTE ON MOTION CALENDAR:
February 22, 2024

Plaintiff Bungie, Inc. hereby moves for an order authorizing disclosure pursuant to
47 U.S.C. § 551(c)(2)(B), enabling third-party entities that have been served with subpoenas
with this Court’s permission, including but not limited to Verizon, Inc., *see* Dkt. 27, to respond
to those subpoenas in compliance with the Cable Communications Privacy Act.

1 **I. INTRODUCTION**

2 Bungie, Inc. is the owner and developer of the massive multiplayer online video game
3 shooter *Destiny 2*. Defendants develop, sell, market, and support cheat software targeted to
4 attack *Destiny 2*. *See generally* Dkt. 1.

5 Recognizing that Defendants have deliberately obscured their identities and contact
6 information, this Court granted Bungie’s request to pursue third party discovery on
7 November 29, 2023, *see* Dkt. 27 (the “Order”). Bungie issued subpoenas to those third parties
8 pursuant to that Order. *See* Dkt. 29 at ¶ 10. Bungie has begun to receive productions from those
9 subpoenas, which include a great many IP addresses the Bungie is likely to require further
10 discovery to track down. Declaration of Dylan Schmeier in Support of Plaintiff’s Unopposed
11 Motion to Authorize Third-Party Disclosure ¶ 2.

12 Further, Bungie has received notice from one subpoena recipient, Verizon, that believes it
13 requires a court order, as enumerated in 47 U.S.C. § 551(c)(2)(B), to legally comply with the
14 subpoena served upon it. *Id.* at ¶ 3. Bungie is attempting to use the resources at its disposal to
15 identify the holders of the IP addresses it has obtained. *Id.* at ¶ 7. However, it seems probable
16 that companies like Verizon will have the necessary information to identify the unserved and
17 unidentified Defendants in this case if they can release that information. Therefore, Bungie seeks
18 an order authorizing disclosure pursuant to 47 U.S.C. § 551(c)(2)(B) so that Verizon and other
19 Internet Service Providers (“ISPs”) who require similar authorization can legally comply with
20 the subpoenas they have been served with.

21 **II. FACTUAL BACKGROUND**

22 On October 27, 2023, Bungie filed a motion seeking, as relevant here, third-party
23 discovery to unmask anonymous defendants for service of process. Dkt. 24 (the “Motion”). The
24 Court granted the Motion in part on November 29, 2023. Dkt. 27. Eighteen subpoenas were
25 served in accordance with the Order, and Bungie has already begun receiving the productions it
26 has asked for. Schmeier Decl. ¶ 2. Many of Bungie’s requests, as articulated in the Motion, have
27 resulted in produced IP addresses, a critical step for unmasking the Defendants who are

1 attempting to obfuscate their identities. *Id.* at ¶ 3.

2 On January 17, third party Verizon mailed Bungie’s counsel a letter articulating that it
3 did not believe it could produce the requested discovery without an order under the Cable
4 Communications Privacy Act. *Id.* at ¶ 3. Bungie received this letter on January 25th. *Id.* at ¶ 4.
5 Bungie’s counsel conferred with Verizon’s agent listed on the letter on January 26th and again
6 on February 21st, and they invited Bungie to pursue this Order, indicating that Verizon would
7 not oppose the motion, but that it would not produce the records requested without an order
8 requiring it to do so. *Id.* at ¶¶ 5-6. Bungie foresees a reasonable probability that other ISPs it may
9 need to subpoena may require similar authorization via an order of the Court to satisfy their
10 obligations under 47 U.S.C. § 551.

11 Bungie therefore submits that there is good cause to authorize disclosure under
12 47 U.S.C. § 551(c)(2)(B), and that by issuing an order permitting disclosure under it, the Court
13 may permit the efficient and orderly continuation of Bungie’s third-party discovery efforts in
14 order to move this case forward.

15 **III. LEGAL ARGUMENT**

16 **A. 47 U.S.C. § 551**

17 Section 551(c) governs disclosure of “personally identifiable information concerning any
18 subscriber without the prior written or electronic consent of the subscriber concerned” by cable
19 operators. 47 U.S.C. § 551(c)(1). A cable operator is “any person or group of persons (A) who
20 provides cable service over a cable system and directly or through one or more affiliates owns a
21 significant interest in such cable system, or (B) who otherwise controls or is responsible for,
22 through any arrangement, the management and operation of such a cable system.”

23 47 U.S.C. § 522(5). The disclosure of this personal information is permitted, however, if the
24 disclosure is “made pursuant to a court order authorizing such disclosure if the subscriber is
25 notified of such order by the person to whom the order is directed.” 47 U.S.C. § 551(c)(2)(B).

26 Accordingly, if Bungie satisfies the multi-factor test to show good cause for early discovery,
27 Bungie should be granted discovery under this exception to 47 U.S.C. § 551. *Strike 3 Holdings,*

1 *LLC v. Doe*, No. 18CV47-WQH (RBB), 2018 WL 1427002, *2 (S.D. Cal. Mar. 22, 2018).

2 Bungie has good cause for such an order: As this Court has ruled, Bungie has made good faith
3 efforts to identify the Defendants it seeks to serve, and requires this information to proceed.

4 **B. Good Cause for an Order Authorizing Disclosure by Subpoena Recipients**

5 “Courts may permit expedited discovery before the Rule 26(f) conference upon a
6 showing of good cause.” *Microsoft Corp. v. Mai*, No. C09-0474RAJ, 2009 WL 1393750, *5
7 (W.D. Wash. May 15, 2009) (citation omitted). “Good cause exists where the need for expedited
8 discovery, in consideration of the administration of justice, outweighs the prejudice to the
9 responding party.” *Id.* at *5 (citation omitted). As explained by the Ninth Circuit, “[w]here the
10 identity of alleged defendants will not be known prior to the filing of a complaint[,] . . . the
11 plaintiff should be given an opportunity through discovery to identify the unknown defendants,
12 unless it is clear that discovery would not uncover the identities, or that the complaint would be
13 dismissed on other grounds.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *see also*
14 *Music Grp. Macao Commercial Offshore Ltd. v. John Does I-IX*, No. 14-cv-621 RSM, 2014 WL
15 11010724, *1 (W.D. Wash. July 18, 2014) (“Courts routinely permit early discovery for the
16 limited purpose of identifying ‘Doe’ defendants on whom process could not otherwise be
17 served.”).

18 To establish good cause, Bungie must: (1) identify the Doe defendants with sufficient
19 specificity that the Court can determine that the defendant is a real person who can be sued in
20 federal court; (2) recount the steps taken to locate and identify the defendants; (3) demonstrate
21 that its lawsuit can withstand a motion to dismiss; and (4) show that the discovery it seeks is
22 likely to lead to identifying information that will permit service of process. *Cobbler Nev., LLC v.*
23 *Does I-32*, No. C15-1432RSM, 2015 WL 5315948, *3 (W.D. Wash. Sept. 11, 2015); *see also*
24 *Microsoft Corp. v. Does I-10*, No. C17-1911RSM, 2018 WL 263313, *2 (W.D. Wash. Jan. 2,
25 2018); *Criminal Prods., Inc. v. Does I-8*, No. C17-102-RAJ, 2017 WL 9478825, *2 (W.D.
26 Wash. Feb. 7, 2017).

27 Bungie has identified the Doe defendants with sufficient specificity to satisfy Verizon’s

1 needs and the Court's requirements. Bungie has identified the Defendants with enough
2 specificity to establish their identities as real people such that they are likely to fall under the
3 jurisdiction of the Court, to the Court's own satisfaction. Dkt. 27. It has identified specific
4 identifiers through which ISPs like Verizon and others, should they similarly object, can produce
5 information narrowly and specifically. Bungie recounted its investigation into these Defendants
6 with particularity. Dkt. 24. This investigation continues. Schmeyer Decl. ¶ 7.

7 Bungie's complaint states a claim for direct copyright infringement by Defendants,
8 providing proof of copyright registration and ownership, and alleging Defendants' rampant
9 infringement of Bungie's exclusive rights to reproduce, display, distribute, and create derivative
10 works of the Destiny Copyrights. Bungie also sufficiently alleges Defendants' secondary liability
11 based on Defendants' direct participation in, knowledge of, and material contribution to players'
12 infringement of the Destiny Copyrights. Dkt. 1 ("Compl.") at ¶ 236. Bungie also states valid
13 claims for: violations of the DMCA, 17 U.S.C. § 1201, based on Defendants' circumvention of
14 Bungie's technological protections and trafficking in circumvention devices, *id.* at ¶¶ 303-327;
15 breach of Bungie's LSLA in developing the Software and inducement of others to breach the
16 LSLA, *id.* at ¶¶ 367-400; violations of the RICO Act, *id.* at ¶¶ 256-301; violations of the
17 Computer Fraud and Abuse Act, *id.* at ¶¶ 329-365; and participation in a civil conspiracy, *id.* at
18 ¶¶ 402-406. All these claims are alleged with sufficient specificity to survive a motion to
19 dismiss, and the Court agreed. Dkt. 27.

20 Finally, Bungie has traced the Defendants to the final line of their obfuscations and
21 defenses – the online pseudonyms they hide behind, the email addresses attached to those
22 accounts, and the IP addresses from which they used them. The discovery Bungie seeks will
23 allow them to puncture these masks and attach real people to them. They can then be served and
24 answer Bungie's well-pled complaint in court. Bungie does not yet believe it will require
25 alternate service – if it receives the narrow and specific third-party discovery it is asking for, and
26 if the authorization to disclose is granted, it should be able to track each of these parties down.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Bungie respectfully requests the Court enter the proposed
3 order submitted herewith, authorizing disclosure by subpoena recipients, including but not
4 limited to Verizon, pursuant to 47 U.S.C. § 551(c)(2)(B).

5 Dated this 22nd day of February, 2024.

Respectfully submitted,

6 KAMERMAN, UNCYK, SONIKER &
7 KLEIN, P.C.

FOCAL PLLC

8 By: s/ Dylan M. Schmeyer

9 Dylan M. Schmeyer (admitted *pro hac*
10 *vice*)
11 750 W. 148th Ave, #4216
Westminster, CO 80023
Tel: (719) 930-5942
Email: dschmeyer@kusklaw.com

By: s/ Stacia N. Lay

s/ Venkat Balasubramani

Stacia N. Lay, WSBA #30594
Venkat Balasubramani, WSBA #28269
900 1st Avenue S., Suite 201
Seattle, Washington 98134
Tel: (206) 529-4827
Fax: (206) 260-3966
Email: stacia@focallaw.com
Email: venkat@focallaw.com

12 *Attorneys for Plaintiff Bungie, Inc.*

13
14
15 **WORD LIMIT CERTIFICATION**

16 I certify that this memorandum contains 1,526 words, in compliance with the Local Civil
17 Rules.

18 By: s/ Stacia N. Lay

Stacia N. Lay, WSBA #30594